

DEC 15 1986

JOSEPH F. SPANIOL, JR.  
CLERK

No. 106 ORIGINAL

IN THE

## SUPREME COURT OF THE UNITED STATES

October Term, 1986

STATE OF ILLINOIS - - - - - Plaintiff

VERSUS

COMMONWEALTH OF KENTUCKY - - Defendant

## ANSWER

DAVID L. ARMSTRONG

*Attorney General*

KEVIN M. NOLAND

*General Counsel*

NATHAN GOLDMAN

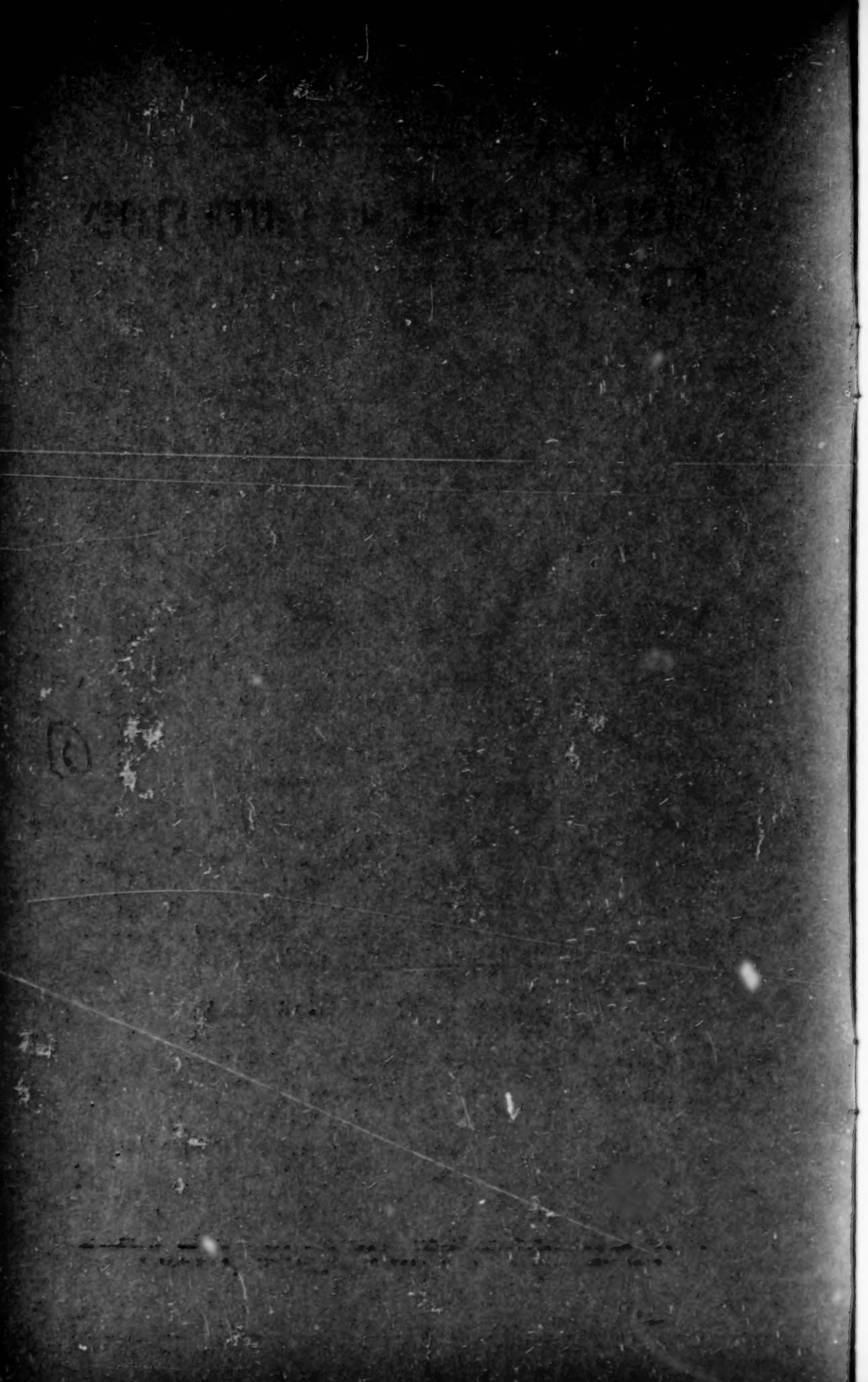
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State Capitol

Room 122

Frankfort, Kentucky 40601

*Attorneys for Defendant**Commonwealth of Kentucky*



No. 106 ORIGINAL  
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**SUPREME COURT OF THE UNITED STATES**

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STATE OF ILLINOIS       -   -   -   -   -   *Plaintiff*

*v.*

COMMONWEALTH OF KENTUCKY       -   -   *Defendant*

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**ANSWER**

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**FIRST DEFENSE**

Comes the Defendant, Commonwealth of Kentucky, by counsel, and in Answer to Plaintiff's Complaint, states as follows:

1. Defendant admits the material allegations of paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X, XV, and XVI.

2. Defendant denies the material allegations of paragraphs XI, XII, XIII, XIV, XVII, and XVIII,

**SECOND DEFENSE**

Comes the Defendant, by counsel, and for its second defense, alleges as follows:

1. As is clearly indicated from the history of the two states, the Ohio River in its entirety was to belong to Kentucky and be Kentucky's boundary with Illinois.

Consistently from the date of its creation almost 200 years ago to the present, Kentucky has claimed the entire Ohio River as its territory. It has always been Kentucky's contention that the boundary between Illinois and Kentucky is the low-water mark on the northwest side of the Ohio River as it exists from time to time.

2. Since its creation in 1818, Illinois has acquiesced in this determination and has failed to bring any proceedings or to otherwise dispute Kentucky's claim. For example, Illinois failed to join in the case of *Ohio v. Kentucky*, [No. 27, Original; decided 471 U. S. —, 85 L. Ed. 2d 119, 105 S. Ct. 2011 (1985)] or *Kentucky v. Indiana*, [No. 81, Original].

### THIRD DEFENSE

Comes the Defendant, by counsel, and for its third defense, alleges as follows:

1. That Illinois' failure to bring proceedings or to otherwise dispute Kentucky's claim constitutes laches, and therefore, Illinois' claim in this cause must be disallowed.

### FOURTH DEFENSE

Comes the Defendant, by counsel, and for its fourth defense, alleges as follows:

1. That the decisions of this Court in *Ohio v. Kentucky*, 444 U. S. 335 (1980) and *Ohio v. Kentucky*, 471 U. S. — (1985) do not apply to this case. Rather, the Court's decision in *Ohio v. Kentucky*, 410 U. S.

641 (1973) as it applies to the facts herein is controlling.

2. Consistently over the years, Illinois has refused to assert jurisdiction over any portion of the Ohio River and has acquiesced in Kentucky's assertion of jurisdiction over the Ohio River in its entirety. As a result, the acquiescence principal applied in *Ohio v. Kentucky*, 410 U. S. 641 (1973), is applicable to the present case to confirm that the boundary between Illinois and Kentucky is the low-water mark on the northwest side of the Ohio River as it exists from time to time.

#### **FIFTH DEFENSE**

Comes the Defendant, by counsel, and for its fifth defense, alleges as follows:

1. That pursuant to the principles of riparian boundaries, including accretion, erosion and avulsion, the boundary between Illinois and Kentucky should be the low-water mark on the northwestern side of the Ohio River as it exists from time to time.

WHEREFORE, the Defendant, Commonwealth of Kentucky, urges Plaintiff take nothing by its Complaint; that the boundary line between Illinois and Kentucky be affirmed as the low-water mark on the northwest side of the Ohio River as it exists from time to time; that it be awarded its costs in defending this action; and for other just and proper relief.

Respectfully submitted,

DAVID L. ARMSTRONG  
*Attorney General*

KEVIN M. NOLAND  
*General Counsel*

NATHAN GOLDMAN  
*Assistant Attorney General*  
State Capitol  
Room 122  
Frankfort, Kentucky 40601  
*Attorneys for Defendant.*  
*Commonwealth of Kentucky*

**CERTIFICATE**

I, Kevin M. Noland, Counsel of Record for defendant and a member in good standing of the Bar of the Supreme Court of the United States, hereby certify that on the \_\_\_\_ day of December, 1986, I served the foregoing Answer on the plaintiff by depositing in the U.S. Mail, first class, postage prepaid, a copy addressed to the following counsel for the plaintiff: Attorney General Neil F. Hartigan; Robert V. Shuff, First Assistant Attorney General; Roma J. Stewart, Solicitor General, State of Illinois; and Donna Dagnall and John Brunsman, Assistant Attorneys General, at 500 South Second Street, Springfield, Illinois 62706.

KEVIN M. NOLAND  
*Counsel for Defendant*